appointed secretary with an allowance of $200 a month; that his nephew be made a clerk with a salary of $160 a month; that one of the rooms at the back of the plaintiff's house be turned into the company's office and furnished at the company's expense and that the company's motor-car normally used by the second defendant be kept at his (the plaintiff's) house when not so used. The second defendant did not agree to any of these demands. Thereupon the plaintiff appeared to be angry and thereafter the relationship between them was wholly different.

That meeting was denied by the plaintiff, and the second defendant's averment has to be weighed against the plaintiff's denial. In doing so, however, regard must be had to subsequent events. The story of these has been told by my Lord and again it is not necessary to repeat what he has said. The plaintiff's wife wrote to the bank on 26th November informing them that she would no longer be signing cheques on the old company's account which would be operated in future solely by the second defendant, a statement, incidentally, which is somewhat curious in view of the lady's previous explanation that the second defendant's signature alone would not be acceptable to the bank. A new company of which Musa, the plaintiff's father-in-law, was a director was registered on 12th December, 1963. The plaintiff's wife went to the Mentri Besar and told him that the second defendant had demanded money from one of his associates to be given to the Mentri Besar and to the U.M.N.O. Pahang which was contemplating erecting a new building in Kuantan. The Pahang Government commenced to make enquiry and discovered that the second defendant had been guilty of a number of minor irregularities in the conduct of the guano concession. And the concession was ultimately withdrawn from his company and given to the company of which the plaintiff's father-in-law was a director.

That series of events by itself does not prove that the second defendant was speaking the truth. Coincidence is not proof. But it and the second defendant's evidence considered together were fully sufficient in my view to support the judge's finding that there was a meeting between the parties on 15th October at which the plaintiff increased his demands on the second defendant and his company and at which his demands were resisted.

In all the circumstances (and I have only refrained from discussing the numerous other matters in issue because I regard that such discussion on my part is superflous) I can find nothing that would justify this court in saying that the trial judge was wrong when he found that the allegations made by the second defendant regarding the events of 10th August and 15th October, 1962, were justified. And if these were justified then, particularly having regard to section 8 of the Defamation Ordinance, the defence of justification was made out.

I would dismiss the appeal.

Ong Hock Thye F.J. concurred.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.; S. Seenivasagam & Sons.*

LIM KO & ANOR. v. BOARD OF ARCHITECTS

[F.C. (Barakbah C.J. (Malaya), Pike C.J. (Borneo) and Ong Hock Thye F.J.) March 21 1966]

[K.L. — Federal Court Civil Appeal No. 60 of 1965]

Architects — Disciplinary proceedings — Conduct infamous in a professional respect — Natural justice — Architects Ordinance, 1951, ss. 9 and 16 — Architects Rules, 1955, rr. 45 and 48.

The appellants Lim Ko and Wong Chee Leong had been found guilty of unprofessional conduct in that (a) Lim Ko had signed for the purposes of submitting for approval, drawings made or under the supervision of Wong Chee Leong and (b) Wong Chee Leong had been a party to securing the signature of Lim Ko on the plans and has shared fees with him. An appeal to the High Court was dismissed ([1965] 2 M.L.J. 203) and the appellants appealed to the Federal Court. On appeal it was argued that (a) the board of architects was wrong in delegating its powers under section 9(1) of the Architects Ordinance; (b) there were irregularities in the composition of the committee of inquiry which heard the complaint in this case in that they were differently constituted for the hearings and the chairman did not preside over the meeting; (c) the appellants were not given sufficiently detailed notifications of the charges made against them; (d) that although the board had found the appellants guilty of unprofessional conduct this did not amount to a finding that the conduct was "infamous" in a professional respect under section 9(1)(b) of the Architects Ordinance; (e) that the appellants were not given an opportunity to present their cases; (f) that the contents of the Municipal file referred to by the committee of inquiry were not disclosed to the appellants or their counsel; (g) that the principles of natural justice had not been observed.

Held: (1) the appeal to the High Court and to the Federal Court was by way of rehearing and it was open to the appellants to show that the decision of the board was wrong;

(2) an inquiry under the Architects Ordinance is not to be equated to a criminal prosecution and all that the board was required to do was to do its best to act justly and reach just ends by just means;

(3) the proceedings before the board in this case were conducted with punctilious regard for justice and fairplay and there was no sign of any violation of the rules of natural justice;

(4) the Municipality file in this case was produced and the appellants and their counsel were well aware of the contents of the file;

(5) the board was entitled to set up the committee of inquiry in this case and this committee had not violated any of the rules of natural justice and the decision was correctly made by the board after considering the report of the committee;

(6) as the board had found the appellants guilty of unprofessional conduct within the provisions of section 9(1)(b) of the Architects Ordinance, the board must have had in mind the words of that section and so had in effect found the appellants guilty of conduct "infamous in a professional respect".

Cases referred to:—

(1) *Barnard* v. *National Dock Labour Board* [1953] 2 Q.B. 40.

(2) *Vine* v. *National Dock Labour Board* [1957] A.C. 488.

(3) *R.* v. *Huntingdon Confirming Authority, ex parte George and Stamford Hotels Ltd.* [1929] 1 K.B. 698.

(4) *Re Lee Kian Soo* [1953] M.L.J. 195.

(5) *Felix* v. *General Dental Council* [1960] A.C. 704.

(6) *Martin* v. *Disciplinary Committee of the Royal College of Veterinary Surgeons* [1965] 1 All E.R. 949.

(7) *Russell* v. *Duke of Norfolk* [1949] 1 All E.R. 109.

(8) *Local Government Board* v. *Artlidge* [1915] A.C. 120 at p. 132, 133.

(9) *Board of Education* v. *Rice* [1911] A.C. 179.

(10) *B. Surinder Singh Kanda* v. *Government of Federation of Malaya* [1962] M.L.J. 169, P.C.

(11) *Official Solicitor* v. *K. and another* [1963] 3 W.L.R. 408.

(12) *Nakhuda Ali* v. *M. F. de S. Jayaratne* [1951] A.C. 66.

(13) *Annamunthado* v. *Oilfields Wakers Trade Union* [1961] 3 All E.R. 621.

(14) *Hughes* v. *Architect Registration Council of the United Kingdom* [1957] 3 W.L.R. 119, 126; [1957] 3 All E.R. 437.

(15) *Allinson* v. *General Council of Medical Education and Registration* [1894] 1 Q.B. 750.

(16) *R.* v. *General Council of Medical and Registration* [1930] 1 K.B. 562.

(17) *Osgood* v. *Nelson* L.R. 5 H.L.C. 636, 652.

(18) *Ceylon University* v. *Fernando* [1960] 1 W.L.R. 223, 232, P.C.

(19) *Byrne* v. *Kinematograph Reuters Society Ltd.* [1958] 1 W.L.R. 762, 784.

FEDERAL COURT.

Dato' David Marshall (*H. R. Sankey* with him) for the appellants.

S. D. K. Peddie for the respondents.

Cur. Adv. Vult.

Barakbah C.J. (Malaya): I have had the opportunity of reading the judgments of the Chief Justice of Borneo and my brother Ong, both of whom have covered all material questions of fact and law relevant in this appeal. I agree with their conclusions and will only add my views briefly.

It is a cardinal fact to remember that the board of architects is a domestic tribunal, whose proceedings are not subject to the same degree of close scrutiny for irregularities which, in the ordinary courts of law, may suffice to prove fatal to the validity of its decisions. Provided that, in the special circumstances of each particular case, the principles of natural justice have not been violated, what is more important is not the form but the substance.

The charges against both appellants *viz.* breaches of rules 48 and 45 respectively were so linked together that it is hardly possible to deal with each of them independently. They were both participants in the same transaction. Lim was charged with signing, for purposes of submitting for approval, drawings made by or under the supervision of Wong. Both were represented by the same learned counsel, who, if he understood what the charge was against the one, must no less clearly have understood what the charge was against the other. The charge against each remained entirely unanswered notwithstanding every opportunity to do so.

In my opinion it was impossible for Wong to deny that the drawings were made by him, just as it was impossible for Lim to deny signing them. Wong had admitted that he indexed his own jobs by means of job numbers, though not invariably. In this particular case, there was a job number, together with his name, appearing in all prints. So his explanation could not possibly hold water.

There was also Wong's admission, when asked if Lim had paid him for the job, that he had "not yet" been paid. The admission was in clear terms. Lim did not even bother to attend the proceedings to put in a formal denial of the charge against himself.

Accordingly the evidence stood unrebutted that Wong had prepared drawings, in expectation of profit, for Lim to sign, and that Lim did so. Both were therefore guilty as charged. Whether or not their conduct was "infamous in a professional respect" is a question of law; my brothers Pike and Ong had no hesitation in describing it as infamous and I fully agree.

In the minutes of the board, however, it was stated that Wong was found guilty of unprofessional conduct within the provisions of section 9(1)(b) of the Architects Ordinance in that he "had permitted the submission in his name of a certain drawing prepared by his staff . . . and it was discovered subsequently . . . that there was an erasure of his name thereupon and the said drawing was afterwards signed by one Lim Ko (a Part I Registered Architect)".

Are these minutes, even if manifestly inaccurate, final and conclusive to the extent that this court cannot go behind them to satisfy itself that they truly set out the facts? As this appeal is by way of rehearing I do not consider ourselves so precluded. I consider it the duty of the court at all times to rectify all manifest

errors. Had the reasons for the board's decision not been given, this court would have felt itself at liberty to examine the record of the proceedings to satisfy itself that the decision was right. Because the reasons were imperfectly stated, I do not think that the court is helpless to do the same.

I would dismiss the appeal of both appellants with costs.

Pike C.J. (Borneo): This is an appeal against the decision of the High Court dismissing an appeal by the appellants Lim Ko and Wong Chee Leong who are registered under the Architects Ordinance, 1951, as architect and specially authorised person, respectively, from an order of the board of architects cancelling their certificates of registration and striking their names off the register.

The appellant Lim Ko was registered under Part I of the register as an architect and the appellant Wong Chee Leong was registered under Part II as a specially authorised person.

It is clear that the profession does not, *inter alia*, permit any mingling of its goats with its sheep. Specially authorised persons registered under Part II may not, for example, indulge in fee sharing or go into partnership with persons not similarly registered in Part II. The reason for this is that a person registered in Part II does not possess any of the qualifications prescribed in paragraphs (a) to (d) of section 6(1) for full registration. His only qualification is that he has been approved by a building authority for registration under paragraph (e) of section 6(1) as a specially authorised person who as such is entitled to do such limited architectural work as the terms of the approval of the building authority specify.

The rules made for regulating the etiquette of the architect's profession are contained in Part II of the Architects Rules, 1955, under the heading "Code of Professional Conduct" and those with which this appeal is concerned are rules 45 and 48 which read as follows:—

"45. (1) An architect, except as provided for in paragraph (3), shall not share or agree to share fees nor shall he enter into partnership in regard to architectural work with any person not registered in Part I of the register.

(2) A specially authorised person, except as provided for in paragraph (3), shall not share or agree to share fees nor shall he enter into partnership in regard to professional work with any person not registered in Part II of the register.

(3) An architect or specially authorised person may, however, share fees with a consultant not registered under the Ordinance provided such consultant is registered as an architect within the country in which he practices.

. . . . . .

48. A person registered under the Ordinance shall not sign or put his signature to drawings, plans or specifications not prepared by him or by his staff under his supervision for the purpose of obtaining the sanction of any building authority".

The appellants through their counsel, Dato' Marshall, have taken a great number of objections to the order of the board directing that their names be struck off the register and the court has been referred to a great number of cases both by counsel for the appellants and by counsel for the respondent board. Having considered these cases it does not seem to me to be necessary to refer specifically to more than a comparative handful of them.

Firstly, it was argued that because section 9(1) empowers *the Board* after due enquiry to order cancellation of the certificate of registration and the striking off from the register of the name of any person who has offended against the section the board cannot, since such enquiry is a *quasi-judicial* act, delegate that function. Learned counsel referred us to a number of cases including *Barnard* v. *National Dock Labour Board* [1] and *Vine* v. *National Dock Labour Board.* [2] If it were necessary to make a finding on this I would have no difficulty in accepting the position. But in my opinion it does not arise because the board has not delegated its function. It is entitled to regulate its own procedure and is empowered to appoint committees for any purpose. (See section 3(8) of the Ordinance and rule 11 of the Architects Rules, 1955). It has been suggested that because section 21 of the Ordinance gives a power to make rules to regulate the procedure at enquiries that this indicates a clear intention that such enquiries should only be held in accordance with such rules and that the general power of the board to regulate its own procedure is excluded in relation to disciplinary enquiries. I do not find this argument convincing.

While I have no doubt that for a purpose as serious as cancelling an architect's registration it is desirable that the procedure should be made known and that the same procedure should be followed in each case I do not find that there is anything in the statute which makes it mandatory for the board to make rules for this purpose.

The board are, in my opinion, in the absence of any direction in the statute to the contrary entitled to make the "due enquiry" required by section 9(1) of the Ordinance in whatever way they deem appropriate provided that the method of enquiry which they adopt is not in breach of any specific provision of the statute and does not result in a denial of natural justice to the persons into whose conduct the enquiry is made.

In this case they have deputed to a committee of their number the task of enquiring into the allegations and reporting their findings to the board. The minutes of this committee of

enquiry were circulated to the members of the board who accepted the opinion of the committee that the appellants had been guilty of unprofessional conduct.

I see nothing objectionable in deputing to a disciplinary committee the duty of enquiring into disciplinary charges. Indeed there seems to be much to commend it. For such an enquiry to be conducted by the full board would be a very cumbersome procedure and might well result in a lack of adequate control of the proceedings. Provided that the board, which is the body charged with the duty of enquiring under section 9, considers the findings of the committee appointed for the purpose and itself decides upon the guilt or innocence of the person whose conduct is being enquired into I consider that they would have done all that the statute required. In this case the decision was that of the board.

Two other objections to the validity of the committee were taken by learned counsel for the appellants, namely —

(a) that the committee of enquiry which sat on 24th August to confirm the minutes of the meeting of the 6th July and which resolved that the result of the enquiry be reported to the board was differently constituted in that Mr. Eric Taylor, the president of the board, was present and Mr. James Lee was absent; and

(b) that there was a breach of rule 11 of the Architects Rules, 1955, in that Mr. Taylor did not preside over the meeting;

and that by reason of these irregularities there had been no due enquiry sufficient to satisfy section 9(1) of the Ordinance.

As to the first point — a majority of the committee both on the 6th July and 24th August was composed of the same people, namely, Mr. R. G. Winthrop, Mr. Yap Pow Veng, Mr. R. G. Jones and Mr. E. S. Cooke and the decision to which they came on the 24th August is recorded as being unanimous. Had Mr. Taylor been absent and had Mr. Lee been present the result could not have been affected even if Mr. Lee voted against the rest.

It seems clear that if the committee of enquiry was a court or bench of justices the fact that it was differently constituted at an adjourned sitting would be a fatal defect in its proceedings. But even in the case of Justices which admittedly sat judicially a divisional court in *R.* v. *Huntingdon Confirming Authority, ex parte George and Stamford Hotels Ltd.*,[3] was of opinion that the fact that the confirming authority was differently constituted at its second sitting did not invalidate the proceedings, though this view did not find favour in the Court of Appeal where Lord Hanworth M.R. said:—

"One more point I must deal with, and that is the question of the justices who had not sat when evidence was taken on April 25, but who appeared at the meeting of May 16. We think that the confirming authority ought to be composed in the same way on both occasions: that new justices who have not heard the evidence ought not to attend. It is quite possible that all the justices who heard the case and the evidence on April 25 may not be able to attend on any further hearing, but however that may be, those justices who did hear the case must not be joined by other justices who had not heard the case for the purpose of reaching a decision, on this question of confirmation".

In my opinion however the same strict rule is not appropriate to the proceedings of a domestic enquiry of this nature and I consider that there is no merit in this objection in the circumstances of this case.

Turning now to learned counsel's second objection. It seems to me that the failure of the president to preside over the meeting of the committee on the 24th August could only be regarded as invalidating the committee's proceedings if it is to be said that the provisions of rule 11 in this regard are mandatory. In my view they are not. They are merely directory and included, so it seems to me, to emphasize what the propriety of the position would demand, namely, that if the president is a member of a committee of the board he should *virtute officio* preside over the committee. The rule does not go to the length of requiring him to preside over a committee of which he is not a member. If, for example, the president attended a meeting of a committee of which he was not a member (and I see no reason why he should not attend a meeting of such a committee) he is not by the terms of rule 11 required to preside. In the case of this objection also I can see no merit.

Next they complain that they were not given sufficiently detailed notification of the charges made against them. Clearly, the case of each appellant must be considered separately.

The first appellant, Lim Ko, was informed by letter of the 26th October, 1961, that the board had been given to understand that drawings submitted to the Ipoh Town Council in respect of a six-storey building for the Kinta Insurance Company Ltd. at Jalan Yang Kalsom, Ipoh, were signed by him while the advertisement in the Press indicated that the plans and tender documents were obtainable from Wong Chee Leong of Ipoh. Lim Ko would of course be well aware that Wong was only registered under Part II while he himself was registered under Part I. The letter further told him that there was an enquiry following information laid before the board and invited him to give any explanation he might consider would be of assistance. His reply dated 3rd November, 1961, informed the board that he designed the plans for the building and signed and submitted them to the Ipoh Town Council for approval and that as he became sick and was away recuperating he put his plans and tender documents at Wong Chee Leong's place. It seems clear he was well aware that he was being accused of signing plans not

prepared by him or under his direction. If he was in doubt the next letter from the board dated 29th March, 1962, would have removed it. From that it was abundantly clear what the charge against him was. Had he attended the enquiry it would have become even clearer to him what was being alleged.

I am satisfied that Lim Ko was sufficiently informed of the nature of the allegation against him and that there is no merit in this objection in his case.

With regard to the second appellant, Wong Chee Leong, the board by letter dated 25th October, 1961, asked him to inform the board whether any drawings in respect of the six-storey block of offices to which an advertisement in the *Straits Times* related had been submitted to the local authority for approval and if so who signed them. The letter also enquired if any restrictions had been placed by the building authority on its approval of his registration. The appellant Wong replied by letter of the 20th November, 1961, that the plans were designed and submitted to the Ipoh Town Council by Lim Ko and that Lim Ko signed the plans. Wong also admitted that there was a restriction placed on his form of approval for registration. The board then sent a further letter dated the 13th April, 1962, informing Wong that the information which it had did not agree with his statement and that the board was being asked to institute an enquiry under section 9(1)(b) of the Architects Ordinance. While it may not have been clear from this what precisely Wong was being accused of I am of opinion that this defect was cured at the commencement of the enquiry when he was told that the misconduct alleged against him was a breach of rule 45.

Now rule 45 prohibits two things, namely, sharing fees and entering into partnership and it might be said that the board should have indicated which of these offences was alleged. If this be so then, in my view, it did in the course of the enquiry before the committee when Wong was asked about the drawings signed by Lim Ko on which the appellant Wong's name had appeared and been erased. He admitted that he put some finishing touches on the drawings which he said were done by the appellant Lim Ko and when asked if Lim Ko had paid him for that work Wong replied "Not yet". This seems to me to have been a fairly clear indication that the misconduct alleged was sharing fees. It seems therefore clear that Wong was under no doubt as to what acts the board were enquiring into as unprofessional, namely, sharing fees, and I am of the opinion that this objection fails in respect of the appellant Wong also.

The appellants next complain that the board have found them guilty of unprofessional conduct or discreditable conduct and that this does not amount to a finding that the conduct was "infamous in a professional respect" which is the only type of conduct referred to in section 9(1)(b).

Now in my opinion it would clearly be better if the board's finding had been set out more fully and had made it clear on the face of the finding that the board found that the appellants had committed the acts complained of and that in the opinion of the board those acts amounted to conduct infamous in a professional respect. This would clearly have shown that the board's mind had been specifically directed to the question as to whether what the appellants had done was not only professionally reprehensible but also amounted to conduct infamous in a professional respect. This seems to be desirable because it is not, as I apprehend, all unprofessional acts which professional brethren of competency and repute would stigmatise as infamous, and this view clearly finds support in cases such as *Re Lee Kian Soo, an architect,*[4] *Felix* v. *General Dental Council* [5] and *Marten* v. *Disciplinary Committee of the Royal College of Veterinary Surgeons* [6] to mention only a few.

It is however clear that as conduct "infamous in a professional respect" is the only conduct punishable under section 9(1)(b) that the board must from the outset have applied its mind to the question whether the conduct which they had reason to think the appellants were guilty of would, if it were shown to their satisfaction to have been committed by the appellants, amount to conduct "infamous in a professional respect" since otherwise they would not be entitled to act under section 9(1)(b). Furthermore, the finding which the board made was that the appellants were guilty of unprofessional conduct *"within the provisions of section 9(1)(b)"*. Since it is only unprofessional conduct which is infamous in a professional respect that is within the section I am of opinion that the finding of the board amounts to a finding of guilt of conduct infamous in a professional respect.

This however does not conclude the matter. The question then arises whether on the facts which the board have accepted it was justified in finding the appellants guilty of conduct infamous in a professional respect.

In respect of the appellant Lim Ko the board found that he had signed plans not prepared by him and had thereby acted in breach of rule 48 of the Architects Rules, 1955. Clearly for an architect to sign plans which he did not prepare or the preparation of which he did not supervise is a very reckless act and one which may have serious and dangerous consequences for the life and safety of members of the public and in my opinion the board were justified in regarding

such conduct as infamous in a professional respect.

With regard to the appellant Wong Chee Leong, if the finding of the board as recorded in its resolution which is reproduced at page 120 of the record means that he had been a party to submitting drawings for a building which by the terms of his approval for registration as a specially authorised person he was not entitled to prepare or submit and that he was a party to securing the signature of an architect (namely, the appellant Lim Ko, who was entitled to prepare and submit such plans) to those drawings then I am of opinion that the board would be justified in stigmatising such conduct as infamous in a professional respect. And this would in my opinion be so whether or not the appellant Wong Chee Leong had shared fees for the drawings with the appellant Lim Ko.

The appellants' next complaint is that they were not given an opportunity to present their cases. Now I am not going to pretend that in my opinion the enquiry held by the board was in any sense a model of what such a disciplinary enquiry should be. It left much to be desired but it does not necessarily follow that the appellants were not given an opportunity to answer the charges or that in any other respect it resulted in a denial of natural justice.

Clearly the form and substance of the enquiry must be looked at closely to see whether in any substantial respect there could be said to be a denial of natural justice. But it must not be looked at as would the proceedings of a court and cases which relate to the standards expected of courts of justices are not in my opinion in point in considering the nature of an enquiry into a disciplinary breach by a member of a professional body by fellow members. *Russell* v. *Duke of Norfolk* [7] is clear authority for this view. The matters complained of by the appellant in *Russell* v. *Duke of Norfolk* bear a marked similarity to the matters complained of by the appellants in this case as is indicated in the judgment of Tucker L.J. at page 117. Further on in his judgment in dealing with the question of the adequacy of the enquiry Tucker L.J. says at page 118:—

> "The only other matter complained of is that it was not until after the stewards had conferred together and come to a decision as to the course which they proposed to take that the plaintiff was, in terms, asked whether he had any further evidence to offer. Throughout this inquiry he was, at every stage, it seems to me, given an opportunity of presenting his case and of asking any questions which he desired to ask. It is true that he was not in terms asked: 'Have you got any witnesses? Do you want an adjournment?' A layman at an inquiry of this kind is, of course, at a grave disadvantage compared with a trained advocate, but that is a necessary result of these domestic tribunals which proceed in a somewhat informal manner. Counsel for the plaintiff, in the course of his forceful argument on this point, again and again said: 'What would be said of local justices who acted in this way?' With all due respect, the position is totally different. This matter is not to be judged by the standards applicable to local justices. Domestic tribunals of this kind are entitled to act in a way which would not be permissible on the part of local justices sitting as a court of law".

I would refer also to Viscount Haldane's observations in the *Local Government Board* v. *Arlidge* [8] where at pages 132 and 133 he says:—

> "In *Board of Education* v. *Rice* [9] he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on everyone who decided anything. But he went on to say that he did think it was bound to treat such a question as though it were a trial. The board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view. If the board failed in this duty, its order might be the subject of *certiorari* and it must itself be the subject of *mandamus* My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its enquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure".

I now come to the enquiry itself. In the first place, I feel that I cannot allow to pass without comment the inordinate length of time which the board took to hold the enquiry. It appears that it received some intimation of possible professional misconduct on the part of one or both of the appellants at some time prior to the 25th October, 1961, because on that day and on the following day letters were addressed to the appellants making enquiries of them in relation to the plans concerning the Kinta Insurance Building at Ipoh. But it was not until the 6th July, 1963, that the appellants were required to attend before the board for their conduct to be enquired into. It is in my view grossly improper for charges against a professional man to be kept hanging over his head for nearly two years before an enquiry is held.

As I have earlier indicated I am satisfied that the appellants were sufficiently made aware of the nature of the acts of misconduct which were alleged against them.

The appellant Lim Ko chose not to attend the enquiry — it was said because he was sick. I find it difficult to accept this. Surely a professional man against whom a charge of professional misconduct is being made would either attend or if too ill to do so would instruct his counsel to press for an adjournment to enable him to be present. But in this case no medical certificate was produced — indeed his counsel did not even know what or how serious his client's illness was — and no application was made for an adjournment.

At the enquiry the registrar informed the

meeting that the enquiry was being held to enquire into the conduct of Wong Chee Leong and Lim Ko regarding certain alleged breaches of rule 45 by Wong Chee Leong and rule 48 by Lim Ko.

Some exchanges then took place between counsel for the appellants and the registrar as to the procedure to be followed at the enquiry. After these exchanges the registrar intimated that he proposed first to examine Lim Ko, who of course was not present. Lim Ko's counsel was asked if he would be prepared to attest Lim Ko's signature. Counsel did not reply to that question but informed the board that his client was prevented from attending by illness.

Lim Ko not being available to be questioned, the board then addressed a number of questions to Wong Chee Leong relating to certain drawings numbered 2003 and 2005 for Job No. 131 to which Wong Chee Leong gave what, in many cases, can only be described as evasive answers. He did however admit to putting some finishing touches to the drawings and in answer to a suggestion that Lim Ko must have paid him for his work replied "Not yet".

This seems a clear indication that he was expecting payment and the interjection of his counsel after this answer had been given that "no payment is to be expected" was hardly the behaviour of counsel defending an innocent client.

Having apparently concluded their questioning of Wong Chee Leong the board then permitted counsel for the appellants to ask a number of questions. Some of the answers he got were not very helpful to his clients but this is a risk which counsel runs if he asks questions the likely answers to which he does not know.

The board then called Inche Aiyub Ghazali bin Hashim, Building Superintendent of the Municipality of Ipoh, to produce the Municipality's file relating to the proposed building on Lot Nos. 2022-2025, Jalan Yang Kalsom, Ipoh, for the Kinta Insurance Company Ltd.

It has been suggested that the contents of this file and in particular minute 28 were not disclosed to the appellants or their advocate. If this was the case then in my opinion the appellants would be entitled to succeed in their appeal since this alone would have been sufficient to say that there had been a denial of natural justice. But the file was produced and questions were asked about various of its contents. It does not appear that the appellant Wong or, his counsel ever protested that they could not be expected to answer questions about documents they had not seen. Nor was any demand made for an opportunity to examine the file's contents, nor was any demand made for an adjournment on the ground that the appellants required time to examine and consider the contents of the file.

No questions were put by the appellant Wong Chee Leong or his counsel to Inche Ghazali nor does it appear that they were prevented from questioning him.

Had a demand for an opportunity to examine the contents of the file, or for an adjournment to examine the file, been refused or had the appellant or his counsel been refused an opportunity to question Inche Ghazali then it is clear that the appellants would have had very good reason for their complaints and that there would have been a serious denial of natural justice.

Can it be said that despite the failure of the appellant or his advocate to do any of these things there has still been a denial of natural justice.

We have been referred to the case of *B. Surinder Singh Kanda* v. *The Government of the Federation of Malaya* [10] on the question of the failure to disclose the Ipoh Municipality's file to the appellants. Assuming that there was such a failure, which in my view is not the case, the *Kanda* case differs in a material respect from this in that the report which was complained of in that case was not produced at the disciplinary enquiry at all. Its very existence was unknown to the appellant until it was produced in the action which he brought in the High Court following upon his dismissal. It is clear from the minutes of the enquiry in the present case that the file was produced and its existence brought to the notice of the appellants at the enquiry. If at the enquiry they did not become aware of the contents of the file it is surprising that no protest was made at the enquiry and that in the correspondence between the appellants' advocates and the board no protest was made nor even any request for an opportunity to inspect the contents of the file.

I am of opinion therefore that there has been disclosure of the file and its contents and with the greatest respect to the learned judge I find it difficult to see how he came to the conclusion that the contents of the file (now Exhibit 1) and in particular of the minutes 28 (now Exhibit 1A) was not disclosed and that its non-disclosure was warranted.

With regard to the non-disclosure of the names of architects who had complained or made a report to the board I am of opinion that the board were entitled to refuse to make such a disclosure. The governing body of a profession must if it is to maintain the standards of the profession must be allowed some latitude in regard to the carrying out of its functions. It is to be expected that such a board will receive reports from its members and if those reports may not be, and are not, regarded as confidential it is certain that the board would no longer receive them. In such a case therefore it is in my opinion necessary to balance the rights of the profession as a whole

against the rights of the individual members. In this regard it seems to me that the case of *Official Solicitor* v. *K. and Another* [11] is in point. The board is a domestic body concerned with the domestic affairs of the architect's profession and it has a right to have regard to the interests of the profession as a whole in deciding whether or not information received by it and the source of that information should be disclosed to one of its members.

Furthermore, in connection with this matter, it is pertinent to note that the question by the appellants' counsel which elicited that the board was in possession of information given it by other architects was framed in the widest possible terms and was not limited to information relating to the appellants (see pages 23 and 76 of the Record of Appeal), nor was it established that any such information which the board had was relevant to the enquiry or if relevant that it was divulged to the members of the board other than its officers.

The observations of Tucker L.J. in *Russell* v. *Duke of Norfolk* referred to earlier seem relevant; they are as follows:—

> "There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter under consideration and so forth".

I now come to the findings of the board. It is clear that in respect of the appellant Lim Ko he was found guilty of the same offence with which he was charged. I am satisfied that he knew what the charge was. He made no answer to it and in my view there was sufficient evidence before the committee of enquiry to justify its findings. In the words of Lord Radcliffe in *Nakhuda Ali* v. *M. F. De S. Jayaratne* [12] at page 82:—

> "But, failing explanations from him on points such as these, a heavy cloud of suspicion remained; and, if the respondent felt bound to act on this suspicion, it was not because he had come to entertain it through any denial of natural justice or without reasonable cause, but because the appellant himself either could not, or would not, produce the explanation that would have dissolved it";

and I would accordingly dismiss this appeal in respect of the appellant Lim Ko.

It seems to me however that in relation to the appellant Wong Chee Leong the position is slightly different. Wong Chee Leong was charged with a breach of rule 45 and the nature of the evidence, as elicited by questions to this appellant, indicated, so it seems to me, that the specific breach of that rule with which the enquiry was concerned was sharing fees. There then arises the question, "is the finding of the board, which clearly does not in so many words find him guilty of sharing fees contrary to rule 45, sufficient".

In considering the proceedings of a domestic tribunal of this sort a legalistic approach is not appropriate. If it were a criminal trial or if there were detailed rules which the board were required to observe and from which they had deviated, as was the case in *Annamunthodo* v. *Oilfields Workers' Trade Union* [13] then it may be that the finding of the board as recorded in their minutes at page 120 of the record might be held to be bad. But here the rule against which he was alleged to have offended prohibited two things and although the evidence in my view tended to indicate that he was alleged to have shared fees, the admission earlier referred to that he did expect fees would also support the existence of a partnership in the project with the appellant Lim Ko. It does not seem to me therefore that the finding of the board — the details of which were not, according to the appellant's solicitor, communicated to him — could have prejudiced the appellant Wong Chee Leong in making his defence had he chosen, after his solicitor had been informed by the committee that in their opinion their enquiries had disclosed acts of unprofessional conduct and after being asked if he had anything to say on behalf of his clients, to make any defence.

In these circumstances it seems to me that the passage from the judgment of Lord Radcliffe in the *Nakhuda Ali* case to which I have already referred in relation to the appellant Lim Ko also applies in the case of this appellant and I would accordingly dismiss the appeal of Wong Chee Leong also.

In the result I would dismiss both these appeals with costs.

Ong Hock Thye F.J.: This is an appeal from the decision of Abdul Aziz J., affirming an order of the respondent Board of Architects that the names of the appellants be struck off from the register kept by the board under the Architects Ordinance, 1951.

The first appellant was an architect registered in Part I of the Register of Architects. The second appellant was a "specially authorised person" registered in Part II, being a person not otherwise qualified for registration under Part I, but who had been approved for registration by a building authority — in this case, the Ipoh Town Council. Under section 6(2) of the Ordinance "a specially authorised" person may submit plans only to and within the limits of, the building authority which has approved him for registration and his certificate of registration takes the form set out in Schedule "D" which authorises him to submit plans of a restricted character only. In the case of the second respondent, the building plans he could submit were those for

(a) temporary and semi-permanent buildings (b) small sanitary installation plans of dwelling houses and (c) permanent buildings of brick construction up to two storeys not involving reinforced concrete and structural steel designs. No question arises in this appeal as to the above restrictions, which were admitted by this appellant.

On October 27, 1960 plans for a proposed building on Lots 2022 to 2025, Jalan Yang Kalsom, Ipoh, for the Kinta Insurance Co. Ltd. were submitted to the Ipoh Town Council for approval. A few months later certain information came to the knowledge of the respondents and their attention was called to an advertisement in the *Straits Times* of March 16 and 18, 1961, that plans and tender documents for a six-storey building for the Kinta Insurance Co. Ltd. were obtainable from the second appellant. On the face of it he had no qualifications for designing and submitting plans for that class of building.

On April 24, 1961 the respondents' registrar wrote to the chairman of the Ipoh Town Council inquiring whether the drawings for the building project were prepared by the person submitting them to the council for approval. On May 1, 1961 the council engineer sent a copy of the registrar's letter to the first appellant for his comments. The latter's reply of May 10, 1961 was to the effect that the designs were prepared, signed and submitted by himself, and his explanation for the second appellant coming into the picture was that he, the first appellant, had to go away to Penang to recuperate after an illness and, therefore, had to put his "plans etc. temporarily in Wong Chee Leong's place for calling tenders." The council engineer duly communicated the tenor of this reply to the registrar, but apparently the letter went astray, and the registrar on October 25, 1961 wrote again to the chairman of the Ipoh Town Council asking for a reply to his letter of April 24, 1961. On November 14, 1961 the council engineer replied enclosing copies of the relevant correspondence.

Meanwhile, on October 25, 1961 the secretaries to the respondent board wrote to the second appellant with reference to his advertisement in the *Straits Times* inquiring: "who signed the drawings if submitted".

On October 26, 1961 the secretaries wrote to the first appellant for an explanation how plans and tender documents relating to drawings said to have been signed by him could have been advertised as obtainable from the second appellant. On November 3, 1961 the first appellant replied that he designed the building himself and signed and submitted the plans, giving again the explanation he had rendered to the Town Council for so doing.

On November 20, 1961 the second appellant sent in his reply to the same effect.

It would appear that the respondent board carried out further investigations after receipt of those replies. On March 27, 1962 their secretaries wrote to the first appellant as follows:

> "The Ipoh Town Council confirm that you submitted drawings for a proposed building for the Kinta Insurance Co. Ltd., at Jalan Yang Kalsom, Ipoh.
>
> Drawings laid before the board of a project headed proposed building on lots 2022-2025 Jalan Yang Kalsom, Ipoh, for Kinta Insurance Co. Ltd. bear the name of Wong Chee Leong, 52, Lahat Road, Ipoh.
>
> There would appear to be a contravention of rule 48 of the rules made under sections 4 and 21 of the Architects Ordinance and I am requesting the board to consider and examine the case under section 9(1)(b) of the Architects Ordinance.
>
> Any details or explanations you have to offer will assist the board in its work.
>
> Should you wish to exercise your rights under section 9(3) of the Ordinance please advise by return."

On April 13, 1962 the board's registrar wrote to the second appellant as follows:

> "Reference is made to your letter of 20th November 1961.
>
> Information placed before the board does not agree with the statement made in your letter under reply.
>
> I am therefore asking the board to institute an enquiry under section 9(1)(b) of the Architects Ordinance.
>
> If you wish to exercise your rights under section 9(3) please advise by return and say if you will attend in person or wish to be represented by counsel and if by counsel the name and address of the person concerned."

Both appellants duly replied that they would exercise their rights under section 9(3) and by May 16, 1962 had jointly retained as their solicitors Messrs. Singh & Co. of Ipoh.

On August 4, 1962 the respondents' secretaries wrote to Messrs. Singh & Co. requesting that "the approved drawing for the proposed building on Lots 2022/5 . . . be submitted by Mr. K. Lim for examination." The solicitors in their reply of August 27, 1962 regretted being unable to comply as the approved drawings were required by their clients. In fact the request was never complied with, although the certificate of fitness for occupation relating to his building was issued on November 14, 1962 and the enquiry held by the respondent board into the conduct of the appellants did not commence until eight months later.

On July 6, 1963 five members of the Board of Architects sat at Kuala Lumpur to inquire into the charges against the respondents, with Mr. R. G. Winthrop as chairman and Mr. E. S. Cooke as Registrar. The secretaries were in attendance to take down the minutes, which they did in the style of minutes of company meetings. The board had no legal adviser. Mr. H. R. Sankey

of Messrs. Singh & Co. appeared as counsel for both appellants, only one of whom, the second appellant, was present. The board was informed by Mr. Sankey that the first appellant was unable to attend by reason of illness, though counsel did not know what the illness was.

In the minutes, the subject of inquiry was stated as follows:

> "Alleged unprofessional conduct on the part of
>
> Mr. Wong Chee Leong — infringement of Rule 45
> Mr. Lim Ko — infringement of Rule 48
>
> in respect of project — proposed building on Lot Nos. 2022-2025, Jalan Yang Kalsom, Ipoh, for Kinta Insurance Company, Limited.
>
> . . . . . .
>
> Mr. Cooke informed the meeting that the inquiry was held to enquire into the conduct of Messrs. Wong Chee Leong & Lim Ko regarding certain alleged breaches of Rule 45 by Wong Chee Leong and Rule 48 by Mr. Lim Ko."

At the outset Mr. Sankey inquired about the procedure to be followed; he asked for "specific allegations" and criticised the constitution of the body holding the inquiry. Here I should mention that, under subsection (6) of section 3 of the Ordinance, four members sufficed to form a quorum, and that, under subsection 8, the board could regulate its own procedure and frame rules for that purpose. However, rules for an inquiry under section 9 had never been made.

Counsel then went on to submit what I would paraphrase as follows: (1) that specific charges be formulated; (2) that witnesses be liable to cross-examination; (3) that documentary evidence be produced from proper custody; (4) that a *prima facie* case should be made out before the defendants were required to make their answer; (5) that the defendants be at liberty either to elect to make a statement or to give evidence on oath or affirmation and, generally, that all witnesses were to give evidence on oath or affirmation.

The registrar, Mr. Cooke, next stated that the charges were made under section 9(1)(b) of the Ordinance and that the inquiry would proceed in accordance with the provisions of subsection (3) of the same section. ,

The inquiry then commenced with the examination of the second appellant. Here I should remark that counsel raised no objection to the course that was taken nor did he make any observations on the requirement of sworn evidence. The substance of the second appellant's statement was that the drawings were not prepared by him, nor by members of his staff; that his name appeared at the bottom of the drawings because it was possible that some member of his own staff had done so; that the two copies of drawings produced and shown to him, were made from the same negative, but the job was not his own; that to index his drawings, he used job numbers sometimes, but not always.

Asked whether he had seen those drawings before, the second appellant replied, "Please refer to letter of 3rd November 1961". He was apparently well aware of that letter, though it was not his own but the first appellant's, being the letter's reply to the board's letter of inquiry dated October 26, 1961. The second appellant went on to add his own explanation, which was minuted thus:

> "Mr. Wong added that in Mr. Lim's absence, he did some finishing touches for Mr. Lim Ko and Mr. Wong's staff thinking this was Mr. Wong's work put Mr. Wong's name on drawing."

Then followed a question suggesting that, if Wong did the finishing touches for Lim, then Lim must have paid Wong for so doing. The second appellant's reply, in quotes, was "Not yet", to which counsel immediately added: "No payment is to be expected." This uncalled for interpolation in the course of a witness's examination seems to me most extraordinary behaviour on the part of counsel who should have known better than to give evidence himself. It led, not unnaturally, to the second appellant making a further statement qualifying the plain words of the answer he had just given — that his own staff might receive the payment.

Continuing, the second appellant stated that he exercised no control over documents prepared in his office if they were not his own drawings. Asked why his staff should work on drawings which were not his, the reply was that he assisted the first appellant to put finishing touches. He denied submitting to the Town Council a drawing on the project, but when asked whether the Town Council had occasion to write to him regarding this project, there was no answer, and when the question was pursued further, as to whether he had any correspondence over the project with anyone, the answer was that he could not remember in regard to this project. He could, of course, have refreshed his memory, had he so desired, by a perusal of his own files. On this point I may add that one naturally wonders whether he could possibly have failed to do so in the course of instructing his solicitors. Having admitted to the finishing touches, he agreed that he must necessarily have checked the plans prepared by the first appellant, but he would neither admit nor deny having seen his own name on the plans.

At this stage of the proceedings another extraordinary diversion occurred. In the words of Abdul Aziz J.:

> "Counsel then quite improperly put questions to the board, which the board unfortunately condescended to reply . . . Having been diverted from its course, the committee composed of laymen, not unnaturally got into confusion. When the committee regained its composure it went back to the purpose of the inquiry and called

Enche Aiyub Ghazali who produced the file relating to the building in question."

Questions put by counsel to the board — when he thus interrupted the board's examination of the second appellant — occupied four pages of the record, comprising 23 questions and answers. This was followed by a whole page of submissions. I think it will be useful to summarise what took place. In answer to counsel the registrar stated that the plan had been sent to him through the post, that the board had no informers, and that the board had duly made inquiries regarding the submission for approval of this particular plan which he would produce "in a moment".

Counsel next referred to the board's letter to Mr. Lim Ko dated October 26, 1960 and asked whether the Town Council's reply to the board's inquiry in any way conflicted with Mr. Lim Ko's own reply that the plan was signed by him. The answer was that the Ipoh Town Council admitted the drawing was signed by Mr. Lim Ko and submitted by him as well.

Adumbrating the line of defence to be taken, counsel asked whether the plan relied on by the board was the one submitted to the building authority for approval; whether there was any objection to one architect being assisted by another in planning or in putting the finishing touches; and whether there was "any objection to an architect asking a specially authorised person to put the finishing touches if he does not engage to do it for a fee". Counsel then went on to raise hypothetical cases, one of which could not have been irrelevant or pointless; the question and answer being as follows:

"(21) Suppose a person prepares a plan and lets someone else sign for approval purpose, what offence or breach has been committed?

Answer: Person who prepared committed no offence."

Following on the above, counsel submitted "without prejudice" (although I fail to understand what he meant in this connection) that there was no evidence of a partnership between the appellants, that there was no evidence that the plan submitted by Mr. Lim was not prepared by himself, and that consequently neither appellant was at fault. It was further submitted that the inquiry was illegal and *ultra vires* sections 4 & 21 of the Ordinance; that the board having failed to make any rules to regulate the procedure for such an inquiry, there was a denial of natural justice to the persons charged. This last observation seems wholly premature.

Counsel having concluded his submission, examination of the second appellant was resumed with a further question put to him: whether he had been paid any fee whatsoever by the first appellant, to which the reply was "No".

Inche Aiyub Ghazali bin Hashim, Building Superintendent of the Municipality of Ipoh, was next called by the registrar and he produced the file of the building on Lot 2022-2025. Thereupon reference was made to a copy letter therein addressed to the second appellant from the Waterworks Department and the Building Superintendent was asked:

Q. Why should Town Council request payment of fee from Mr. Wong Chee Leong?

A. See letter dated 27th October 1962 from Mr. Lim. (*Note*: it is clear that the year meant was 1960, not 1962).

Q. What did Mr. Wong do when he received letter from Ipoh Town Council?

A. Please see letter of 14th March 1961.

I should observe that references to the correspondence in the file met with no objection or protest by counsel.

Two sets of plans referred to as *A* & *B* were then tabled, the former coming from the Ipoh Town Council file. Comparison of the two sets plainly reveals that the prints were produced from the same negative. Authorship of *B* appears in the right bottom corner in these words: "Wong Chee Leong, 52 Lahat Road, Ipoh, which had been erased from every copy of set *A*. Above the erasure was the signature of the first appellant. Confronted with these two sets the second appellant was unable to explain how the erasures came to be made on set *A*. Counsel was then asked if his client, the first appellant could "produce the 2nd copy of the drawing returned by the Ipoh Town Council to the Architect", but there was no answer. Here I should repeat that a written request for production of this appellant's copy had already been made to Messrs. Singh & Co. on August 4, 1962 and no attempt had been made to comply. Turning to the second appellant, the board then asked him whether he would accept the "minutes in the Ipoh Town Council file as evidence." There was no record of any answer, nor, I may add, any record of objection by counsel as to the admissibility of the minute paper referred to. It is clear beyond peradventure that the board must have considered the paper to be of vital importance because the meeting was at this stage adjourned and arrangements made to hand over the file to Mr. H. S. Ong of the Attorney-General's Department for safe custody. The paper was a report made by the Building Superintendent to the Chairman of the Ipoh Town Council. It reads as follows (the underlining are mine):

" Minute Paper No. N.B.1 (P) 821/60 (28)
Chairman,

Reference above file, I submit the following for your information and consideration:

2. As far as I can recollect, plans were submitted in Mr. K. Lim's name as architect and engineer and Mr. Wong Chee Leong did all the work as a designer.

3. At the beginning Mr. Wong submitted the plans with his own covering memo. at p. (1). This was later corrected. There is a story behind this.

4. Some time in February 1961 or thereabout, Mr. Foo Yin Chee came to my office and talked about the Kinta Insurance building and advised me that if plans were submitted by Mr. Wong and signed by both Mr. Wong and Mr. K. Lim, it would be better to get Mr. Wong's name out because through his past experience when he was partnering Mr. Liew Why Hone, they were warned by the Board of Architects that partnership of Part II and Part I persons were not permitted. His advice was reasonable. (In this case, Mr. Wong is part II and Mr. Lim part I).

5. I told him (Mr. Foo) that plans were in fact in Mr. K. Lim's name as architect and engineer and I would check that up again. When he left, I checked up the file and saw Mr. Wong's name appearing on the right hand bottom corner of the plans and also in the correspondence.

6. In order to avoid the council getting involved (in case if the Board of Architects made inquiries), I got the plans and relevant correspondence amended accordingly. (During this interview with Mr. Foo Yin Chee, he mentioned that the Board of Architects was making investigations about the said Kinta Insurance building and we should expect a letter from them in due course).

7. Mr. Wong handled the whole project till he was advised to stop.

8. When amended plans were returned, only Mr. K. Lim's name appeared in plans though Mr. Wong in person handed in the plans and hence p. (14) as noted in the was written in Mr. Wong's name and subsequently corrected to Mr. K. Lim's.

9. Enclosure (13) dated 14.3.61 was addressed in error. Even before this memo. was sent in, Mr. K. Lim was the architect as pointed out at page (12) dated 8.3.61.

10. Since the amended plans were in order, they were recommended for approval by council.

11. Subsequently, there was a query from the Board of Architects vide p. (15) and suitable replies were given.

12. Regarding the original p. (15) which was removed as not relevant, I cannot remember the contents but it was not removed due to any other purposes except that it had got nothing to do with this file.

13. In all relevant letters wrongly addressed, I have myself altered the names merely by cancelling them and not erasing or removing them.

14. Enclosure p. (1) was removed and replaced after the advice of Mr. Foo Yin Chee as explained in para (4) above.

15. Despatch book shows "despatch" signed by Mr. Wong. As explained above, Mr. Wong did all the necessary job for Mr. K. Lim and he came personally to get or hand in plans.

16. In conclusion, I assure you that this was done in good faith in order to clear the council of any possible mistakes. It is admitted that this was not a very wise move but something had to be done, please.

(Signed) A. GHAZALI.
29.2.1962 Building Superintendent."

On August 9, 1963, a month after the adjournment, Messrs. Singh & Co. wrote to the board's secretaries. I quote only the relevant paragraph:

"You will recall that on the 6th July 1963 after the meeting, our Mr. H. R. Sankey requested that he be supplied with a copy of notes of the proceedings. It was said at the time that these would be supplied. We shall be grateful if the notes could be made available to us within the next few days."

It will be observed that no copy of the vital minute paper was asked for.

On August 16, Messrs. Singh & Co. wrote to the secretaries asking for an early decision or "some indication as to whether the proceedings are going to be abandoned or not."

The next meeting was held on August 24, 1963 comprising four of the original five who sat on July 6 with the board president, Mr. Eric Taylor, taking the place of an absentee member, Mr. James Lee. Mr. Winthrop was chairman, as he had been at previous meeting. The minutes of July 6, after certain corrections were duly confirmed, and then went on as follows:

"The committee were unanimous 'that in their opinion their enquiries had disclosed acts of unprofessional conduct on the part of Messrs. Lim Ko and Wong Chee Leong within the provisions of section 9(1)(b) of the Architects Ordinance and further Lim Ko had acted in breach of Rule 48 of the Architects Rules.'

It was agreed that these findings be reported to the next meeting of the board."

On September 11 and October 8, Messrs. Singh & Co. again asked for an early decision in the matter. On October 17, a copy of the minutes was supplied to them, but they still made no request for a copy of Inche Aiyub Ghazali's minute paper. On October 29 notice was given to the appellants and their solicitors that the inquiry would be resumed on November 20, 1963 at which they would be entitled to be present in person or be represented by counsel.

On November 20, Mr. Sankey appeared before the board on instructions of the appellants, both of whom were "unable to attend personally" for reasons undisclosed. Mr. Eric Taylor, the president of the board, was chairman. Fifteen other members of the board attended this meeting, including all five members of the committee of inquiry, I quote the relevant minutes in full:

"The Chairman informed the Meeting that Mr. H. R. Sankey, counsel representing Messrs. Lim Ko and Wong Chee Leong was present, and proposed that Item 3 of the agenda regarding the complaints against Messrs. Lim Ko and Wong Chee Leong be dealt with before other business. This was agreed to by the meeting.

The board confirmed the findings against Messrs. Lim Ko and Wong Chee Leong. It was RESOLVED:

That in the opinion of the board, Messrs. Lim Ko and Wong Chee Leong had been guilty of acts of unprofessional conduct within the provisions of section 9(1)(b) of the Architects Ordinance in that (a) Mr. Lim Ko signed plans not prepared by him and thereby committed a breach of Rule 48 of the Architects Rules 1955 and (b) Mr. Wong Chee Leong had permitted the submission in his names of a certain drawing prepared by his staff (for a proposed building for the Kinta Insurance

Company on Lot Nos. 2022-2025 Jalan Yang Kalsom, Ipoh) to the Ipoh Town Council and it was discovered subsequently from Ipoh Town Council File No. MB. 1 (P) 821/60 that there was an erasure of his name therefrom and the said drawing was afterwards signed by one Lim Ko (a Part I Registered Architect).

Mr. H. R. Sankey was then invited to join the meeting and was informed by the chairman that in the opinion of the board, there was a *prima facie* case of unprofessional conduct on the part of both his clients, and was asked if he had anything to say on behalf of his clients.

Mr. H. R. Sankey replied by asking the board to use its discretion not to strike off his two clients from the register of registered persons kept by the board but to give them a warning. Having made this statement Mr. H. R. Sankey then retired from the meeting and was informed that the findings of the board would be communicated to his clients. The chairman then called upon the meeting to decide whether or not on the evidence before them Messrs. Lim Ko and Wong Chee Leong should be struck off from the register kept by the board, and that their Certificates of Registration be cancelled.

IT WAS RESOLVED that the said Lim Ko and Wong Chee Leong be struck off from the register kept by the board under section 5 of the Architects Ordinance, 1951 and that their Certificates of Registration be forthwith cancelled and that they be notified accordingly."

When the finding of a *prima facie* case by the board was announced, counsel was given a copy of an extract from the minutes of August 24, 1963 which I have already quoted. Yet he gave no intimation that he intended to correct or controvert any statement brought forward which were prejudicial to the persons whom he represented. He did not ask for any adjournment; instead, he elected to treat the inquiry as closed and thereupon made a plea for leniency.

The decision of the board to strike off the appellants' names from the register was subsequently conveyed to them and to their solicitors on November 26, 1963.

Their appeal to the High Court was dismissed by Abdul Aziz J. on June 17, 1965.

At the commencement of this appeal Dato' Marshall, on behalf of the appellants, applied that the minute paper and the whole of the Ipoh Town Council file be admitted as further evidence. The motion was not opposed by Mr. Peddie. We allowed the application and the application and the file and minute paper have been marked "I" and "IA" respectively.

Dealing first with the charges, Dato' Marshall referred to Rule 48 of the Architects Rules 1955 (LN. 345/55) which reads:

"A person registered under the Ordinance shall not sign or put his signature to drawings, plans or specifications not prepared by him or by his staff under his supervision for the purpose of obtaining the sanction of any building authority."

His contention was that, since the first appellant signed and submitted his own plans for approval, he was not guilty of any breach of the said rule. As to the second appellant, counsel's contention was that sub-rule (2) of Rule 45 — which prohibits a partnership or sharing of fees between a specially authorised person and any other person not registered in Part II — was the only part of the Rule which could possibly apply and no infringement thereof was proved in the absence of any evidence of a partnership or sharing of fees.

Since Dato' Marshall questioned the sufficiency of the evidence, I think it would be as well to dispose of this point for a start. Before doing so, however, a preliminary question has to be determined: that is, whether a decision of the board is open to review at all where there was evidence on which it could reasonably have come to the conclusion it did.

With all respect to Abdul Aziz J., I am of opinion that an appeal such as the present one is by way of rehearing (see section 29 of the Courts of Judicature Act, 1964) as also are appeals to the Federal Court from decisions of the High Court (see section 69). Both under section 9(3) and section 16 of the Architects Ordinance, any person whose name has been removed from the register is given an unqualified right of appeal. If, as the learned judge held, the "opinion of the board" were to serve as a curtain, behind which the appellate court should not be entitled to look, then, I am afraid, the right of appeal would avail an aggrieved person nothing. As was said by Lord Goddard C.J. in *Hughes* v. *Architects' Registration of the United Kingdom.*[14]

"It is contended that this court cannot on the authorities reverse the finding that the conduct of the appellant was disgraceful as an architect, though not in the popular sense of the word, because what is or is not proper professional conduct is entirely a matter for the council. On this point reliance is placed on *Allinson* v. *General Council of Medical Education and Registration,*[15] and on *Rex* v. *General Council of Medical Education and Registration.*[16] The essential and vital difference between those cases and the present, in my opinion, is that no appeal is given from a decision of the General Medical Council and an appeal is given from a decision of the Architects' Registration Council. This is not a matter of *certiorari*, it is an appeal . . . . The only ground on which a person can be removed from the register is that he has been guilty of conduct disgraceful in his capacity of an architect. He is given a right of appeal against his removal. If, therefore, the court cannot consider whether he has been guilty of conduct which justified his removal the right of appeal would be purely illusory. The appeal given by the section is against the finding, not against the degree of punishment, for the only sentence that can be imposed is removal from the register."

A similar view was expressed by the Privy Council in *Felix* v. *General Dental Council.*[5]

It lies, therefore, on the appellants to satisfy us that the decision below was wrong. Since a rehearing requires reconsideration of all the evidence I think it proper to sum up such evidence briefly. First, the two sets of drawings produced showed that, originally, both appellants must have signed them jointly, but the name, address and signature of the second appellant was subsequently erased from set "A", leaving

only those of the first appellant. Secondly, the first defendant refused to produce, or cause to be produced, the duplicate set of drawings returned to him after approval by the Ipoh Town Council, which he could easily have done, to contradict an otherwise irresistible inference raised by the erasures. Thirdly, there was an admission by the second respondent that he expected to be paid by the first respondent — which clearly supported the inference of a partnership or sharing of fees — an admission which would have been unqualified but for the unfortunate and unjustifiable intervention of counsel. Fourthly, the minute-paper by the building superintendent provided corroboration in material respects, making abundantly clear not only the true relationship between the architect and the specially authorised person, but also the object and purpose of their acting in concert. Why, if not for personal profit, should an architect permit his own name to be used by a special authorised person on plans which, otherwise, would never have been passed?

As to the minute paper I have come unhesitatingly to the conclusion that, while attempting to palliate his own part in the whole sorry business, the building superintendent was merely telling a true story from which it was impossible not to disclose the parts played by each of the appellants whom it was originally his intention to assist. Was any statement in the minute paper ever challenged or contradicted? From the record of the proceedings of July 6, 1963, there can be no doubt that the contents of the paper took the members of the board by surprise. It had been a confidential document until production of the file. The explanatory questions that preceded its production show that not even the registrar had previously been aware of the paper. Coming from an independent official source, it was proof of a symbiotic relationship which plainly defied the code of professional conduct which the appellants were in honour bound to observe.

It had been complained, as one of the grounds of appeal, that counsel for the appellants at the inquiry was unaware of the contents of this paper. Abdul Aziz J. considered the report irrelevant and consequently expressed no opinion on this point. With respect, however, I think the report a most damning exposure. Since the reaction of the board showed what they thought about it, its significance could not possibly have escaped the attention of counsel. I should have thought that counsel of the experience of Mr. Sankey could not have failed to evidence at least some idle curiosity about the contents of a document which was sufficiently important to be consigned to an officer of the Attorney-General's Department for safe custody: all the more so, when it must obviously have related to nothing else but the professional conduct of the persons whom he was representing. Dato' Marshall, in the course of his submissions, explained to this court that "Mr. Sankey took the file to Mr. H. S. Ong". He must therefore have had, in the course of so doing, every opportunity to acquaint himself of the contents, if not to take a copy of the minute paper as well. He had not objected to its admissibility, and there is nothing on the record that he was ever denied sight or perusal thereof. When Messrs. Singh & Co. on August 9, applied for a copy of notes of the proceedings of July 6, they made no mention of the minute-paper, nor, after the notes were supplied to them on October 7 did they point out its omission. That date was over a month before the date fixed for the resumption of proceedings before the board. I am thus compelled to come to the conclusion that the appellants, no less than their counsel, were well aware of the contents of the paper and consequently of the case they had to meet on November 20, 1963.

Complaints regarding the charge are, therefore, entirely without substance. An inquiry is not to be assimilated to a criminal prosecution: so said Lord Colonsay in *Osgood* v. *Nelsons* [17] see also *dicta* of Tucker L.J. in *Russell* v. *Duke of Norfolk* [7] at p. 117.

Closely connected with complaints about the charge are the further complaints that in the proceedings the principles of natural justice had not been observed. It is to be remembered that no rules had been made regarding the procedure to be followed at inquiries held under section 9(1)(b). In such a case the board, of course, "must do its best to act justly, and to reach just ends by just means. If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means' (*per* Lord Shaw of Dunfermline in *Local Government Board* v. *Arlidge* [8]). In *Ceylon University* v. *Fernando*,[18] their Lordships of the Privy Council also expressed a similar opinion, that, as no special form of procedure had been prescribed, it was open to the Vice-Chancellor of the University to determine the procedure to be followed as he thought best, subject only to the obvious implication that some form of inquiry must be made as would enable him fairly to determine whether he should be satisfied that the charge had been made out.

In the instant case, I must state now and in the clearest terms, that I find the criticisms passed by counsel on certain members of the board entirely baseless and without the least shadow of justification. I have no doubt whatsoever of the honesty, integrity and good faith of every member of the Board of Inquiry and of the board that met in full session on November 20, 1963. Having said so, I shall content myself

by only quoting a brief passage from the judgment of Harman J. (as he then was) in *Byrne* v. *Kinematograph Reuters Society Ltd.*[19] which was cited with approval in *Fernado's* case:

"What then are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not myself think that there is anything more."

"Whether the requirements of natural justice have been met by the procedure adopted in any given case must depend to a great extent on the facts and circumstances of the case in point." (*See Ceylon University* v. *Fernando*). That statement of principle, in my opinion, sufficiently answers the complaint of denial of natural justice. Having had throughout the proceedings the benefit and advantage of legal advice and assistance — which the committee had not — I fail to understand how the simple issue before the inquiry committee could have evaded the grasp of the appellants or their counsel. The question was: "Did Wong make the drawings, which Lim signed, for purposes of submission to the Ipoh Town Council?" The nature of the charge being thus clear and unmistakable, had either appellant been denied adequate opportunity to meet the case against him? Having perused the record with the greatest care I am as fully satisfied as was Abdul Aziz J. that the proceedings had been conducted with punctilious regard for justice and fairplay and nowhere can I detect the least sign of a violation of the principles of natural justice.

There remains only three other grounds of appeal to be dealt with. First, it was contended that the board, in delegating its statutory powers of inquiry to a committee, was acting *ultra vires*. The simple answer, in my view, is that it would be intolerable and unreasonable to hold that, for the purposes of an inquiry under section 9(1)(b), the full board of 16 members constituted under section 3(3) should have to meet, when subsection (6) of the same section declares that four members shall form a quorum. Whether or not the meetings on July 6 and August 24 were rightly described as a meeting of the Board or Committee, there was in fact a board meeting with the proper quorum. A mere misnomer cannot alter the facts. Putting aside hair-splitting distinctions as purely an academic exercise in semantics, the fact remains that the report or finding in the form of minutes of the Board of Inquiry was duly circulated to all members of the full board. For my part I entertain no doubt that the full board on November 20 had not abdicated its own proper functions to the lesser body except for purposes of inquiry and that it had come to an independent decision all its own, based on the evidence produced. Accordingly, in my view no question of delegation arises.

Secondly, it was argued that the so-called committee was differently constituted on the two occasions it met, that is to say, Mr. Eric Taylor on August 24 replaced an absentee member of the original body of five which sat on July 6. I do not think that there is any substance in this argument so long as this domestic tribunal in the conduct of its proceedings had not violated any principle of natural justice. I would repeat what had been said earlier, that the proceedings of domestic tribunals conducting an inquiry are by no means bound by the strict rules which apply to criminal trials. In this connection I would quote from the judgment of Tucker L.J. in *Russell* v. *Duke of Norfolk* [7]:

"Counsel for the plaintiff, in the course of his forceful argument on this point, again and again said: 'What would be said of local justices who acted in this way?' With all due respect, the position is totally different. This matter is not to be judged by the standards applicable to local justices. Domestic tribunals of this kind are entitled to act in a way which would not be permissible on the part of local justices sitting as a court of law."

The third and last point raised by counsel was that Abdul Aziz J. was wrong in equating the finding of "unprofessional conduct" with conduct "infamous in a professional respect" within the meaning of section 9(1)(b). Terminologically this ground of appeal is not quite correct. The resolution of the board, in the exact words of the minutes, states that the appellants were "guilty of *acts of unprofessional conduct within the provisions of section 9 (1)(b)*". In my opinion the specific reference to section 9(1)(b) imports that the board did have in mind the words of the section. Hence I do not agree with the contention that the learned judge "purported, without jurisdiction, to perfect the board's finding". I hold that the mere omission of the word "infamous" before "acts of unprofessional misconduct" is not fatal in the special circumstances of this case. In the first place, the "misconduct in a professional respect" proved against each of the appellants was such that, label or no label, it was manifestly of an infamous and disgraceful character. The term "disgraceful" is not a term of art, said Devlin J. (as he then was) in *Hughes* [14] case. So also must the term "infamous" be regarded. As to what acts amount breaches of a code of professional conduct I would refer to another passage of the same judgment:

"Every profession has practices which it bars. Among the commonest of these are advertising, poaching and undercutting. These activities which are considered in the business world to be laudable examples of enterprise — so much so that their restraint is *prima facie* contrary to public policy — have always been considered offensive professionally. If a man joins a profession in which the use of trade weapons is barred, and then proceeds to employ them, he is taking an unfair

advantage over his fellows. They restrain themselves, believing, rightly or wrongly, that such restraint is essential to the good health of the profession as a whole; he gets the benefit of their restraint and fills his purse at their expense. He is defaulting on the obligation, by which explicitly or impliedly he undertook to be bound when they made him of their company. Such conduct could be thought disgraceful not merely by those of the profession but by outsiders who were not themselves bound by the same standards."

For the specific legal interpretation of terms similar to those used in section 9(1)(b) of our Ordinance, Lord Jenkins, delivering the judgment of the Privy Council in *Felix* v. *General Dental Council* (5) said:

"To make good a charge of "infamous or disgraceful conduct in a professional respect' . . . . there must in their Lordship's opinion (generally speaking) be some element of moral turpitude or fraud or dishonesty in the conduct complained of . . ."

In the same case it was also said as follows:

"The Lordships would add that the question whether in relation to a given matter a dentist has been guilty of infamous or disgraceful conduct is in their opinion a question of mixed fact and law, the question of law being whether on the facts proved or admitted the dentist has been guilty of infamous or disgraceful conduct . . ."

Where, as in the present case, the facts proved plainly showed that the appellants had so conducted themselves as to perpetrate a fraud on the public as well as on the entire professional body of architects, the question is no longer one of seeking to draw a line in a doubtful case which might very well have fallen on one side or the other of such line. The facts being clear, all that remained was a question of law. In both the cases of *Hughes* and *Felix*, just cited, the court had felt at liberty to disagree with the determination of such question by the Architects Registration Council and the General Dental Council. The converse should hold good as well. If the facts proved justify a determination of "infamous conduct in a professional respect", then this court is equally free to say so, even though the term "misconduct" had been omitted so long as there was no other irregularity of such serious proportions as to amount to a denial of natural justice.

I would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Singh & Co.; Skrine & Co.*

NACHIAPPIN v. LAKSHMI AMMAL

[A.C.J. (Raja Azlan Shah J.) March 21, 1966]

[K.L. — Civil Appeal No. 18 of 1965]

Landlord and Tenant — Dilapidations — Landlord alleging that tenant had left premises in an untenant-like manner — Implied term of tenancy.

Evidence — Photographs — Admissibility of — Objection to.

The appellant was the tenant of premises let to him by the respondent. The respondent had obtained damages in an action in which she alleged that the appellant had left the premises in an untenant-like manner and thereby put the respondent to expense to recondition it. On appeal it was argued *inter alia* (1) that the facts did not justify the decision of the learned magistrate (2) that the learned magistrate erred in law in admitting certain photographs as evidence without the production of the originals (3) that there was no specific finding by the learned magistrate of an express obligation to repair and (4) that the learned magistrate had no jurisdiction to adjudicate upon the case as it involved a question of title.

Held: (1) the onus was on the appellant to show that the learned magistrate's evaluation of the evidence was wrong and in this case it had not been proved that there was such an error on the face of the record;

(2) as the photographs had been admitted at the trial without objection by the parties and their counsel, it was not possible for the appellant to complain at the appeal of the mode of proof;

(3) there is an implied obligation on the part of the appellant to use the premises in a tenant-like manner and his failure to do so amounted to a breach of the obligation;

(4) there was no question of title involved in this case, as the premises belonged to the respondent but she allowed it to be managed by her husband.

Cases referred to:—

(1) *Tay Theng Hung* v. *Heap Moh Steamship Co.* [1964] M.L.J. 87, 92.

(2) *Gopal Das* v. *Sri Thakurgi* A.I.R. 1943 P.C. 83 at p. 87.

(3) *Suppiah* v. *Ponnampalam* [1963] M.L.J. 202 at p. 203.

(4) *Ferguson* v. *Anon* 170 E.R. 465.

(5) *Marsden* v. *Edward Heyes Ltd.* [1927] 2 K.B. 1.

(6) *Horsefall* v. *Mather* 171 E.R. 141.

CIVIL APPEAL.

L. Kandan for the appellant.

K. Sothinathan for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is an appeal from a decision of the learned magistrate sitting in Kuala Lumpur. The appellant was a tenant of the respondent at a monthly rent of $130. At the end of the tenancy the appellant left the said premises in an untenant-like manner and thereby put the respondent to expense to re-condition it. The respondent brought an action in the lower court to recover a sum of $350 being expenses incurred to repair the damage done to the said premises. It was never adumbrated either in the court below or before me that the sum was unreasonable. She succeeded in her claim. The appellant has now appealed against that decision.

The decision has been criticised on a number of grounds. Of the various criticisms urged on behalf of the appellant only four are of outstanding interest. In the first place it was urged that the facts did not justify the decision. I do not propose to go at any length into the facts